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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 97

UNITED STATES OF AMERICA, PETITIONER,

VS.

UNION PACIFIC RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1956

CERTIORARI GRANTED OCTOBER 8, 1956

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In the United States District Court
For the District of Wyoming

No. 3736.—Civil.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNION PACIFIC RAILROAD COMPANY, DEFENDANT

COMPLAINT.—Filed April 13, 1954

The United States, by John F. Raper, Jr., United States Attorney for the District of Wyoming, acting under authority of the Attorney General and at the request of the Secretary of the Interior, for its claim states as follows:

1. This is an action brought by the United States and the jurisdiction of this Court is based upon the provisions of 28 U.S.C. 1345.

2. The defendant, Union Pacific Railroad Company, is a corporation duly organized and authorized to do business under the laws of the State of Utah.

3. Under the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, the United States granted to a predecessor in title of the defendant a right-of-way 400 feet in width through the public lands of the United States for the construction of a railroad and telegraph line. The defendant has succeeded to the rights of the original grantee and is now operating a railroad over the right-of-way so acquired.

4. A portion of the right-of-way granted by the described Acts of Congress, and now used by the defendant in operating and maintaining a railroad traverses land owned by the plaintiff described as the N $\frac{1}{2}$ NW $\frac{1}{4}$. Section 24, T. 13 N., R. 68 W., 6th P.M., in the State of Wyoming.

5. Under the Act of July 1, 1862, 12 Stat. 489, as amended by the act of July 2, 1864, 13 Stat. 356, the defendant acquired the right to use the granted right-of-way only for railroad and telegraph line purposes. It acquired no right to use any portion of the

2 right-of-way to drill for or remove subsurface oil and minerals. The oil and mineral deposits underlying the right-of-way remain the property of the United States and subject to its control and disposition.

6. The defendant, Union Pacific Railroad Company, is claiming that it has a right to use the right-of-way not only for railroad and telegraph purposes, but also for the purpose of entering thereon to engage in drilling operations leading to removal of the subsurface oil and gas. In particular, the defendant has applied to the Wyoming Oil and Gas Conservation Commission for a permit to drill a well for oil and gas on a portion of its right-of-way traversing the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 24, T. 13 N., R. 68 W., 6th P.M., in the State of Wyoming. Plaintiff has been informed that the application so filed by the defendant has been approved by the mineral supervisor of the State of Wyoming.

7. Any use of the right-of-way for drilling operations or for the taking of oil, gas and minerals from the subsurface will constitute a violation of the terms and provisions of the Act of July 1, 1862, 12 Stat. 489, as amended, whereby a right-of-way for railroad and telegraph line purposes only was granted by the plaintiff.

8. Unless the defendant is restrained from proceeding with its intention to drill for oil on the right-of-way, the United States will be deprived of its property and the purpose and intent of the aforesaid right-of-way grant will be violated.

9. Although the United States, in the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. 301, has specifically provided a procedure whereby the defendant may obtain a lease to extract the oil, gas and other minerals from under the right-of-way, the defendant has not applied for or obtained a lease under that act.

Wherefore, Plaintiff demands:

(1) That judgment be entered declaring that the defendant is without right to engage in drilling operations on or to remove, lease or otherwise dispose of the gas, oil or other minerals underlying that portion of its right-of-way described in this complaint;

(2) That an injunction be issued permanently restraining and enjoining the defendant, its agents and assigns, from in any manner using its right-of-way in Wyoming acquired by grant under the Act of July 1, 1862, as amended, for the purpose of drilling for and removing gas, oil and minerals, except under a lease issued pursuant to the provisions of the Act of May 21, 1930, 46 Stat. 373;

3 (3) That judgment be entered quieting plaintiff's title to the minerals underlying said right-of-way.

JOHN F. RAPER, JR.,
United States Attorney,
for the District of Wyoming,
Attorney for Plaintiff

Filed. April 13, 1954.

In United States District Court

ANSWER.—Filed May 21, 1954

Defendant Union Pacific Railroad Company, for answer to the complaint herein, admits, denies and alleges as follows:

First Defense.

1. Admits the allegations of Paragraph 1 of the complaint.
2. Admits the allegations of Paragraph 2 of the complaint.
3. Admits the allegations of Paragraph 3 of the complaint and alleges as follows: Defendant and its predecessors have complied in all respects with the provisions of the Act of July 1, 1862, 12 Stat. 489 as amended by the Act of July 2, 1864, 13 Stat. 356. Among other things, defendant and its predecessors constructed a railroad and telegraph line in accordance with the provisions of said Acts of Congress. Under the Act of July 1, 1862, as amended, defendant received a present grant of the lands contained within the right of way referred to in Paragraph 3 of said complaint. This grant conveyed an estate in said lands in fee simple determinable (sometimes called a base, qualified, or limited fee). The United States has only an implied possibility of reverter in the event that defendant ceases to use the right of way. Defendant, or a predecessor thereof, is now and has been at all times pertinent hereto using the right of way and defendant intends to continue to do so. No portion of the right of way has been abandoned.

4. Denies the allegations of Paragraph 4 of the complaint except admits and alleges as follows: Defendant admits that a portion of the right of way granted by Acts of Congress and now used by defendant in operating and maintaining a railroad traverses land described as the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 24, T. 13 N., R. 68 W., 6th P.M. in the State of Wyoming. Defendant also admits that with the exception of the lands within the right of way, title to said described land is in plaintiff. Defendant alleges that plaintiff's only interest in said right of way is an implied possibility of reverter and that all other right, title and interest in said right of way is in defendant.

4 5. Denies the allegations of Paragraph 5 of the complaint.

Defendant alleges that under the Act of July 1, 1862, granting the right of way to defendant for railroad and telegraph purposes, defendant acquired the sole and unrestricted right to drill for, remove, use and dispose of the subsurface oil and other minerals underlying the right of way. Defendant further alleges that its proposed drilling operations and the removal, use or disposal of subsurface oil and other minerals will in no way interfere with the use of the right of way for railroad and telegraph purposes.

6. Admits the allegations of Paragraph 6 of the complaint and

alleges that the application referred to therein has been approved by the Mineral Supervisor of the State of Wyoming.

7. Denies the allegations of Paragraphs 7 and 8 of the complaint.

8. Answering Paragraph 9 of the complaint, defendant admits that it has not applied for or obtained a lease under the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. 301, but denies that the provisions of such Act have application to this defendant in so far as any portion of the right of way granted by the Act of July 1, 1862, as amended, is concerned.

Second Defense.

Under the Act of July 1, 1862, as amended, defendant was granted a right of way 400 feet in width through the public lands of the United States for the construction of a railroad and telegraph line. Under the Act of July 1, 1862, as amended, defendant received a present grant of the lands contained within the right of way referred to in Paragraph 3 of said complaint. This grant conveyed an estate in said lands in fee simple determinable (sometimes called a base, qualified, or limited fee). The United States has only an implied possibility of reverter in the event that the defendant ceases to use the right of way. Under the Acts of Congress, the law of the United States and the law of the State of Wyoming, the right to drill for, remove, use or dispose of the subsurface oil and other minerals passed to defendant with and as a part of the grant of the lands within said right of way. Defendant's proposed drilling and the removal, use or disposal of subsurface oil and other minerals will in no way interfere with the use of the right of way for railroad and telegraph purposes.

Wherefore, defendant prays for the dismissal of the complaint, for defendant's costs incurred herein, and for such other and further relief as the Court may deem just and proper.

5 Dated this 20th day of May, 1954.

LOOMIS, LAZEAR & WILSON,

JOHN U. LOOMIS,

O'MELVENY & MYERS,

LOUIS W. MYERS,

WILLIAM W. CLARY,

WARREN M. CHRISTOPHER,

Attorneys for Defendant.

FRANK E. BARNETT,

W. R. ROUSE,

J. H. ANDERSON,

HENRY M. ISAACS,

Of Counsel.

Filed with proof of service May 21, 1954.

In United States District Court

STIPULATION OF FACTS—Filed October 20, 1954

The United States of America, plaintiff, and the Union Pacific Railroad Company, defendant, by and through their respective attorneys, hereby stipulate and agree as follows:

1. This is an action brought by the United States, and the jurisdiction of this Court is based on the provisions of 28 U.S.C. 1345.

2. Defendant, Union Pacific Railroad Company, is a corporation duly organized and authorized to do business under the laws of the State of Utah.

3. By the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, the United States granted to a predecessor in title of the defendant a right of way 400 feet in width through the public lands of the United States for the construction of a railroad and telegraph line.

4. Defendant, Union Pacific Railroad Company, has succeeded to the rights of the original grantee under said Acts.

5. Defendant and its predecessors have complied in all respects with the provisions of the Acts of Congress referred to in Paragraph 3 hereof. A predecessor of defendant constructed a railroad and telegraph line on the right of way referred to in said Paragraph 3. Defendant, or a predecessor thereof, is now and has been at all times pertinent hereto using the right of way for the purposes set forth in said Act of July 1, 1862. No portion of the right of way involved in this action has been abandoned.

6. Defendant claims that under the Acts of Congress set forth in Paragraph 3 hereof, it received a present grant in fee simple determinable (sometimes called a base, qualified or limited fee) of the lands contained within the right of way and acquired the sole and unrestricted right to drill for, remove, use, and dispose of the subsurface oil, gas, and other minerals underlying the right of way. Plaintiff claims that the defendant acquired the right to use the right of way only for railroad and telegraph purposes, that defendant acquired no right to use any portion of the right of way to drill for or remove subsurface oil and minerals, that the oil, gas, and mineral deposits underlying the right of way remain the property of the United States and subject to its control and disposition, and that plaintiff is entitled to the relief prayed for. The purpose of this case is to adjudicate those claims and determine the relative rights of the United States and the defendant in the oil, gas, and other minerals underlying the right of way.

7. Defendant intends to engage in drilling operations leading to the removal of subsurface oil and gas underlying its right of way traversing the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 24, T. 13 N., R. 68 W., 6th